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Harold Mattice

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SEYFARTH SHAW LLP
131 S. DEARBORN ST., SUITE 2400
CHICAGO, IL 60603-5803

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAROLD MATTICE, JOSEPH R. HEDRICK, and
CHAN W. GRISWOLD

Appeal 2008-004245
Application 09/824,621
Technology Center 3700

Decided: September 25, 2009

Before HOWARD B. BLANKENSHIP, ERIC B. GRIMES, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-8, 10, and 32-40, which are all of the claims before us on appeal. Claims 9 and 11-31 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Invention

Appellants' invention relates to gaming machines. More particularly, the invention on appeal relates to affording access to authorized persons to secure areas of gaming machines. (Spec. 1).

Claim 1 is illustrative:

1. Apparatus for remotely selectively controlling access to a plurality of physical areas of a plurality of gaming machines, the apparatus comprising:

a plurality of electrically operable lock mechanisms, each respectively associated with one of the plurality of physical areas of each of the gaming machines;

each of said lock mechanisms being physically movable between unlocked and locked conditions with respect to its associated area;

control circuitry independent of the gaming machines, said control circuitry including a processor operating under control of a stored program and coupled to each of said lock mechanisms via a communications link for controlling operation thereof;

a data storage and retrieval system adapted to communicate with the processor and including a storage medium for storing data including personnel identification data and access authorization data indicative of the gaming machines and the physical areas, if any, of each of the gaming machines for which a person seeking access to the gaming machines is authorized; and

a data input device coupled to the processor, said data input device enabling a person to input at least personnel identification data that identifies the person, the processor being operable to compare said personnel identification data inputted by the person with said personnel identification data stored by said storage media that authorizes access by certain, identified personnel to certain designated gaming machines of the plurality of gaming machines and to a plurality, but not all, of said physical areas of said designated gaming machines, and cause the lock mechanisms of the plurality of physical areas to move to the unlocked position to allow access to those plurality of physical areas of the designated gaming machines when the personnel identification data inputted by the person matches any of the personnel identification data stored by said storage medium.

Prior Art

The Examiner relies on the following references as evidence:

Henry	US 5,774,058	June 30, 1998
Luciano	US 6,641,483 B1	Nov. 4, 2003

The Examiner's Rejection

Claims 1-8, 10, and 32-40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Luciano and Henry.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs and the Answer for their respective details.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF):

1. Luciano discloses a lockable security cabinet for game controllers (gaming machine). The cabinet includes multiple key locking doors to allow access to specific areas and controls. (Abstract ll. 3-8).

2. Luciano discloses that other locks can be used besides cylinder type rotary key locks, such as electronic locks. (Col. 8, ll. 18-21).

3. Henry discloses a programmable electronic lock. The electronic lock is mechanically, electrically and functionally connected to activate and deactivate a locking mechanism of a lockable device. A user located remotely from the lock may operate the lock from the remote location. (See Abst.)

APPELLANTS' CONTENTIONS

1. Appellants contend that Luciano does not explain anything relating to electronic locks, or disclose how an electronic lock could be implemented or substituted in place of mechanical locks. (App. Br. 8 and Reply Br. 1).

2. Appellants contend that Henry is not directed to gaming machines and does not teach a plurality of electronic locks, or a single electronic lock at different physical locations. (App. Br. 9).

3. Appellants contend that Luciano does not disclose an apparatus for remotely controlling access to a plurality of physical areas of a plurality of gaming machines, and also that Henry does not cure this deficiency. (App. Br. 11 and Reply Br. 3; *see also* claim 21).

4. Appellants contend that the cited references fail to teach or suggest control circuitry as claimed. (App. Br. 11 and Reply Br. 3; *see also* claim 1).

5. Appellants contend that Luciano and Henry cannot be properly combined because the combination would render Henry unsuitable for its intended purpose. (App. Br. 11-12 and Reply Br. 6)

6. Appellants contend that the cited references fail to teach or suggest a solenoid having a plunger that is operative to enable or disable use of a mechanical key lock as claimed. (App. Br. 12-13 and see claims 38-40).

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

1. Have Appellants shown the Examiner erred in determining that the cited references teach or suggest a plurality of gaming machines that comprise a plurality of electrically operable lock mechanisms, with each lock mechanism respectively associated with one of the plurality of physical areas of each of the gaming machines? (Claim 1).

2. Have Appellants shown the Examiner erred in determining that the cited references teach or suggest the “control circuitry” as claimed? (Claim 1).

3. Have Appellants shown the Examiner erred in determining that the cited references teach or suggest energizing or de-energizing a solenoid to move a plunger to enable or disable operation of a mechanical key, as required by the language of claims 38-40?

PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention.

Dunbar v. Myers, 94 U.S. 187, 197 (1876) (citing *Hotchkiss v. Greenwood*, 52 U.S. 248, 267 (1850)) (*Hotchkiss v. Greenwood* was cited with approval by the Supreme Court in *KSR*, 550 U.S. at 406, 415, 427).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants’ Briefs to show error in the Examiner’s proffered prima facie case.

Grouping of Claims

Based on Appellants’ arguments in the Appeal Brief, we will treat claim 1 as representative of claims 1-8, 10, and 32-37. We will consider claims 38-40 separately. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ANALYSIS

Issue 1

We decide the question of whether Appellants have shown the Examiner erred in determining that the cited references teach or suggest a plurality of gaming machines that comprise a plurality of electrically operable lock mechanisms, with each lock mechanism respectively associated with one of the plurality of physical areas of each of the gaming machines.

Based upon our review of the evidence, we agree with and adopt the Examiner's findings with respect to the teachings of Luciano (gaming machine with a plurality of physical locks for associated physical areas) and Henry (remote electronic locks). (See Ans. 4-5 and FF 1, 3). We especially note Luciano's teaching that electronic locks may be substituted for physical (i.e., non electronic) locks, which we find strongly suggests the solution provided in Henry (and thus supports the Examiner's proffered combination). (FF 2).

Thus, it is our view that the Examiner's proffered combination of Luciano and Henry teaches or suggests remotely controlling access to a plurality of physical areas of a plurality of gaming machines, where each remote electronic locking mechanism is associated with one of the plurality of physical areas, as claimed. In light of FF 1-3, we find unavailing Appellants' arguments regarding the purported lack of any explanation as to how the electronic locks would be implemented, and that the proffered combination of references would render Henry unsuitable for its intended purpose. (See Appellants' Contentions 1, 2, and 5 *supra*).

It is our view that Appellants' arguments do not take into account what the collective teachings of the prior art would have suggested to one of ordinary skill in the art and are therefore ineffective to rebut the Examiner's prima facie case of obviousness. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981)(“*The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference*; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”) (citations omitted, emphasis added). This reasoning is applicable in the present case. As noted above, it is our view that Luciano strongly suggests the solution provided by Henry (i.e., remote electronic locks). Therefore, we find that the Examiner properly has combined Luciano and Henry in accordance with § 103.

Appellants further contend that the cited references fail to teach or suggest the elements recited in the preamble. As noted *supra*, we find that the cited combination of references teaches or suggests a gaming machine with a plurality of physical areas, including the use of remotely and selectively controlled electronic locks. Further, we find that casinos contain a plurality of gaming machines such as those disclosed in Luciano. (See Luciano Abst. ll. 1-3). Thus, we do not find Appellants' arguments to be persuasive.

Issue 2

We consider the question as to whether Appellants have shown the Examiner erred in determining that the cited references teach or suggest the “control circuitry,” as claimed. We note that Appellants merely state that “[c]laim 1 also calls for control circuitry including a processor operating under control of a stored program, a data storage and retrieval system and a data input device coupled to the processor. Luciano does not disclose any of this.” (App. Br. 11). Appellants also recite claim language directed to controlling access to certain gaming machines and associated physical areas. (*Id.*)

We find Appellants have failed to rebut the Examiner’s rejection with any persuasive analysis. *See* 37 C.F.R. § 41.37(c)(vii) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). Specifically, in the Brief, Appellants do not make any arguments to distinguish the control circuitry limitation from the portions of Henry that were cited in the Examiner’s rejection, except for the general statement that “Luciano does not disclose any of this.” (App. Br. 11). We find such a statement insufficient to rebut the Examiner’s prima facie rejection. While Appellants also present a “teaching away” argument on page 11 of the principal Brief, we find that Luciano and Henry have been properly combined by the Examiner, as discussed *supra*.

Based on the above discussion, we find Appellants have not shown the Examiner erred in rejecting representative claim 1 as being obvious over the combination of Luciano and Henry. Accordingly, we sustain the

Examiner's rejection of claim 1, and claims 2-8, 10, and 32-37, which fall therewith.

Issue 3

We consider the question as to whether Appellants have shown the Examiner erred in determining that the cited references teach or suggest energizing or de-energizing a solenoid to enable or disable operation of a mechanical key, as required by the language of claims 38-40. Based upon our review of the record, we find the weight of the evidence before us supports the Appellants' position regarding dependent claims 38-40.

The Examiner contends that Henry's lock has a solenoid with a plunger and the plunger opens and closes to allow access. (Ans. 8). The Examiner concludes that the "arrangement of this solenoid in front of a keyhole is within the level of ordinary skill and would yield predictable results . . . [and] would provide additional security by requiring the person opening the lock to know an access code and possess a key" (*id.* at 11).

However, we agree with Appellants' argument that "there is no disclosure in Henry of a solenoid plunger having a retracted position to enable a mechanical key to be used to unlock a lock mechanism, and an extended position (when the solenoid is de-energized) to prevent the mechanical key from being used to unlock the lock mechanism." (App. Br. 12). The Examiner has not provided an adequate basis for concluding that such an arrangement would have been obvious based on either the disclosures of the cited references or the knowledge of a person of ordinary skill in the art.

Based on the record before us, we find Appellants have shown error in the Examiner's rejection of claims 38-40. Accordingly, we reverse the Examiner's obviousness rejection of claims 38-40.

CONCLUSIONS

Appellants have not shown the Examiner erred in determining that the cited references teach or suggest a plurality of gaming machines that comprise a plurality of electrically operable lock mechanisms, with each lock mechanism respectively associated with one of the plurality of physical areas of each of the gaming machines. (Representative Claim 1).

Appellants have not shown the Examiner erred in determining that the cited references teach or suggest the "control circuitry" as claimed. (Representative Claim 1).

Appellants have shown the Examiner erred in determining that the cited references teach or suggest energizing or de-energizing a solenoid to move a plunger to enable or disable operation of a mechanical key, as required by the language of claims 38-40.

DECISION

We affirm the Examiner's rejection of claims 1-8, 10, and 32-37, under 35 U.S.C. § 103(a).

We reverse the Examiner's rejection of claims 38-40 under 35 U.S.C. §103(a).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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SEYFARTH SHAW LLP
131 S. DEARBORN ST., SUITE 2400
CHICAGO IL 60603-5803